

***United States Court of Appeals
for the Second Circuit***



APPENDIX

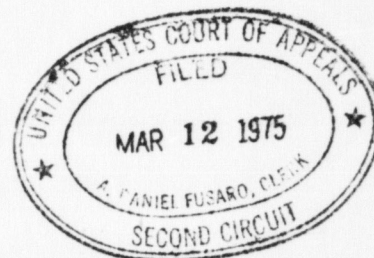
ORIGINAL

75-7074

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 75-7074



EL MESON ESPANOL,

Plaintiff-Appellant,

- against -

NYM CORPORATION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

LAWRENCE LAUER

Attorney for Plaintiff-Appellant

36 West 44th Street

New York, New York 10036 •

PL 2-1416

HALL, McNICOL, MARETT & HAMILTON

Attorneys for Defendant-Appellee

330 Madison Avenue

New York, New York

MU 2-3060

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

1a

Jury demand date:
Pltff. 7-12-74

10036 PL 2-1416

U. S. Form No. 106 Rev.

TITLE OF CASE

EL MESON ESPANOL

VS.

NYM CORPORATION

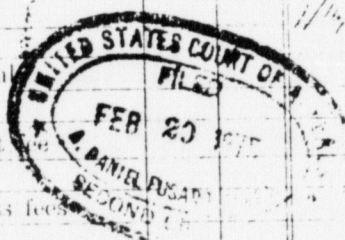
For plaintiff:

Lawrence Lauer, 36 W. 44th St., N.Y.C.,
10036 PL 2-1416

For defendant:

Hall McNicol Marett & Hamilton
330 Madison Ave. NYC 10017 Mu2-306

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk				
J.S. 6 mailed ✓	Marshal				
Basis of Action: Libel \$250,000.00	Docket				
	Witness fees				
Action arose at:	Depositions				



Handwritten notes and signatures on the right margin, including a large 'V' and '15'.

JUDGE BRIANT

84 CIV. 2982

DATE	PROCEEDINGS	Date Order Judgment
Jul 12-74	Filed complaint & issued summons.	
Aug. 1-74	Filed summons & Marshal's returns. Served:	
	NYM Corp. By: Jane Maxwell 7-17-74	
Aug. 12-74	Filed ANSWER to complt by deft.	HMcME
Aug. 19-74	Filed defts notice of examination before trial of plttf.	
Oct. 1-74	Filed defts answers to interrogs of plttf dated 8-14-74.	
Oct. 8-74	Filed plttf's affdvt & notice of motion to compel answers to interrogs.	
	Ret. 10-13-74.	
Oct. 15-74	Filed defts answering affdvt in opposition to plttf's motion to compel further answers to interrogs.	
Oct. 15-74	Filed defts memo of law re plttf's motion to compel interrogs.	
Oct. 17-74	Filed defts affdvt & notice of motion for summary judgment.	
	Ret. 10-30-74.	
Oct. 17-74	Filed defts memo of law in support of motion for summary judgment.	
Oct 29-74	Filed Plttf.'s Affidvt. in opposition to deft's motion for an order dismissing action.	
Oct 29-74	Filed Plttf's Memo. of Law in opposition to deft's motion for summary judgment.	
Dec 27-74	Filed Memorandum & Order that...the DEFT'S motion is granted and the complt. is dismissed dismiss....So Ordered...Briant, J. m/n	
Dec 27-74	Filed Memo-Ent on back of motion filed 10-8-74...The issues presented by the within motion have been rendered moot by our order make this date granting Summary judgment dismissing the complt. the within motion is denied without prejudice.	
	... So Ordered...Briant, J. m/n	
Dec 30-74	Filed Deposition of plttf taken on 9-19-74.	
Jan 17-75	Filed Judgment that plttf take nothing fur. to Rul 56 PRCP and that the action be dismissed on the merits ant that deft. NYM Corp. recover of the plttf. its costs in the action...Raymond E. Burghardt, Clerk. m/n	
Jan 27-75	Filed Plttf's Notice of Appeal to USCA from an order ent. 1-17-75....Copy mailed to Hall, McNicol, Marett & Hamilton, Esqs. of 330 Madison Ave. NYC on 1-28-75..	
12-30-74	<i>Filed reply memo in behalf of deft</i>	

A. E. Thompson

P. O. Callahan

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

NOTICE OF APPEAL

- against -

74 Civ. 2982-CLB

NYM CORPORATION,

Defendant.

-----x

S I R S :

PLEASE TAKE NOTICE, that the plaintiff appeals to the United States Court of Appeals, for the Second Circuit, from an order dated December 27, 1974 by JUDGE CHARLES L. BRIEANT, JR., dismissing the action herein and the judgment entered on January 17, 1975, dismissing the action herein.

PLEASE TAKE FURTHER NOTICE, that the Plaintiff appeals from each and every part of the above order and judgment.

Dated: January 27, 1975

Yours, etc.,

(S)

LAWRENCE LAUER
Attorney for Plaintiff
Office & P. O. Address
36 West 44th Street
New York, New York 10036

NOTICE OF APPEAL

TO: Clerk, United States District Court
Southern District of New York

HALL, McNICOL, ARETT & HAMILTON, ESQS.
330 Madison Avenue
New York, New York

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

74 Civ. 2982-CLB

- against -

JUDGMENT

NYM CORPORATION,

Defendant.

-----x

The defendant having moved for summary judgment pursuant to Rule 56 F.R. Civ. P., before the Court, Honorable Charles L. Brieant, Jr., District Judge presiding, and a decision having been rendered granting the motion,

IT IS ORDERED and DJUDGED that the plaintiff take nothing, that the action be dismissed on the merits and that the defendant, NYM CORPORATION recover of the plaintiff, El Meson Espanol, its costs in the action.

Dated: New York, New York, this 17th day of January, 1975.

(S)

Clerk of the Court

MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

74 Civ. 2982-CLB

- against -

MEMORANDUM AND ORDER

NYM CORPORATION,

Defendant.

-----x

Brieant, J.

Plaintiff, a New Jersey corporation, in 1973 operated a restaurant of the same name on Bergenline Avenue in Union City, New Jersey. Its stock is owned solely by Hector W. Maury and Maricela, his wife, recent emigres from Cuba.

Defendant, a New York corporation, is the proprietor of a magazine published in New York City and entitled "New York". In its November 5, 1973 issue, it printed a lengthy article entitled "COKE: The Big New Easy-Entry Business", which, as its title suggests, informed the readers about an important public issue: the increased illegal international smuggling of cocaine, and its distribution in the New York metropolitan area, as affected by the iron laws of

MEMORANDUM AND ORDER

classical economics.

In this diversity action, plaintiff seeks compensatory damages in the amount of \$250,000.00, and a like sum as punitive damages, for defamation arising out of the coke article previously mentioned. No special damages are pleaded. Drug Research Corp. v. Curtis Publishing Co., 7 N.Y. 2d 435, 441 (1960). The entire article is before the Court, and counsel for both parties have briefed and relied on New York law. No New Jersey authorities have been cited to the Court.

Defendant now moves for summary judgment, pursuant to Rule 56, F.R.Civ. P.

The offending article describes in some detail locations and areas where an illegal narcotic may be purchased. After describing other locations, the author turned his attention to Union City:

"They [i.e. the cocaine dealers] are still out there across the Hudson River, too - in Elizabeth, in West New York, in Union City. Late at night in Union City, bars like El Tropicano at 49th Street and Hudson Avenue and restaurants like El Meson Espanol at 4018 Bergenline Avenue become good places to meet a connection. Park your car some night in front of one of them, turn off all the lights and focus your binoculars on a big Cadillac El Dorado with Miami plates, or,

MEMORANDUM AND ORDER

if you're lucky, a nice Lincoln with diplomatic plates. A great tourist attraction, that Union City."

A corporation may recover for its loss of business and credit caused by a libel. Steak Bit of Westbury v. Newsday, 70 Misc. 2d 437, 334 N.Y.S. 2d 325 (Sup. Nassau, 1972). The question remains whether the libel is actionable. At least prior to June 25, 1974, clearly it was not. All criteria mentioned as a basis for authors' and publishers' immunity on First Amendment grounds, in Rosenbloom v. Metro-media, Inc., 403 U.S. 29 (1971) and Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967) were present in this case. A restaurant which serves food to the general public has been held to be involved in an enterprise of public interest. Twenty-Five East 40th St. Restaurant Corp. v. Forbes, Inc., 37 A.D. 2d 546; Steak Bit of Westbury, supra.

A lawyer reading defendant's galleys for libel, with one eye watching the clock for press time would have had no difficulty in passing the article as privileged in the absence of actual malice under Rosenbloom. However, on June 25, 1974, the Supreme Court, sacrificing predictability on the altar of perfection, modified the Rosenbloom rule and

MEMORANDUM AND ORDER

enacted, in Gertz v. Welch, 418 U.S. 323, 41 L.Ed. 789, a subtle difference between a "private" person defamed, and a "public figure." In so doing, it decided that a well known lawyer who had injected himself into the fray by accepting a retainer to sue a Chicago policeman for a client in a civil case involving a matter of great public and political interest [murder of a civilian by the policeman], a lawyer who had held unpaid public office in the past, and had once been a member of an activist lawyers group, was not a public figure. If he is not, then a fortiori, a corporation operating a place of public accommodation (a bar and grill) and holding itself out to the public as operating a safe and proper place to go, is not a public figure.

While we regard the attempted distinction as a dangerous and unworkable step backward, we are nonetheless bound by it, and must conclude that except to the extent punitive damages are sought, there is now no obstacle under federal law to the maintenance of these actions by others than "public figures" or officials.

The rule, as stated in Gertz, is as follows:
(p. 809 of 41 L.Ed.)

"We hold that, so long as they do not

MEMORANDUM AND ORDER

impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."

We turn now to state law. Almost ninety years ago in a case almost identical on its facts, the complaint was dismissed without a trial. In Kennedy v. Press Publishing Co., 41 Hun 422, 3 N.Y. St. 139 (1886) a Coney Island saloon keeper sought damages for libel. The Court held:

"Taking the article in the strongest sense which it would bear, with the aid of proper inuendoes, it is a charge that the saloons of which it speaks are the resort of improper characters, and that the influence of associations had there are bad. It may be also assumed that it charges that the plaintiff's saloon is one of this character. Granting all this, we think the libel is on the place and not on the person. There is nothing in the article charging that the plaintiff conducts his saloon improperly, or that he is responsible for the character of the guests."

The principle of Kennedy has survived in the New York courts. In Dauer & Fittipaldi, Inc. v. Twenty-First Century, 43 A.D. 2d 178, 349 N.Y.S. 2d 736 (1st Dept. 1973) a libel complaint by a restaurateur was dismissed in reliance on Kennedy. The Court held (McGivern, J.):

"At best, the position of plaintiff is damnum absque injuria. It may have been

MEMORANDUM AND ORDER

the butt of amusement, it may even have acquired an evanescent notoriety, but by no reasonable construction can the article reach actionable libel. And since the plaintiff's owner was not defamed, even if it thinks its pub was sullied, no action lies unless it alleges and proves special damages as a necessary and natural consequence of the publication. Kennedy v. Press Publishing Co., 41 Hun 422; Falcaro v. Teenetta, Inc., 19 A.D. 2d 824, 243 N.Y.S. 2d 1012; Stillman v. Paramount Pictures Corp., 2 A.D. 2d 18, 20, 153 N.Y.S. 2d 190, 191, aff'd. 5 N.Y. 2d 994, 184 N.Y.S. 2d 856. It is even difficult to appreciate how the corporate sensibilities of the plaintiff have been wounded. Saloons have traditionally not been the habitats of Nobel prize winners, or even Rhodes scholars."

There is no genuine issue of fact. In reliance on the New York doctrine set forth in the Kennedy case and its progeny, the motion is granted and the complaint dismissed.

So Ordered.

Dated: New York, New York
December 27, 1974

(S)

CHARLES L. BRIEANT, JR.
U. S. D. J.

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X

EL MESON ESPANOL,

Plaintiff,

v.

NYM CORPORATION,

Defendant.

Judge Charles L. Brieant

NOTICE OF MOTION

No. 74 Civ. 2982

-----X

S I R S :

PLEASE TAKE NOTICE, that upon summons, complaint answer and the affidavits of Thomas Plate and E. Douglas Hamilton, both sworn to October 15, 1974, the examination before trial of Maricela Maury on September 19, 1974 and on all proceedings heretofore had herein, a motion will be made at a stated motion part before Honorable Charles L. Brieant, Jr. at the Courthouse, Room 1106, located at Foley Square, Borough of Manhattan, City and County of New York 30 day of October, 1974 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure for an order granting

NOTICE OF MOTION

the defendant summary judgment herein dismissing the complaint on the merits and for such other further different relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are required to be served at least five (5) days before the return of this motion.

Dated: New York, New York
October 15, 1974

Yours, etc.,

HALL, McNICOL, MARETT & HAMILTON
Attorneys for the Defendant

By _____ (S) _____, A Partner

Office & Post Office address
330 Madison Avenue
New York, New York 10017
Tel. No. 682-3060

TO: Lawrence Lauer, Esq.
Attorney for Plaintiff
Office & P. O. Address
36 West 44th Street
New York, New York 10036
Tel. No. 752-1416

-----X

Judge Charles L. Brieant

CIVIL ACTION FILE
No. 74 Civ. 2982

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

At the time of the publication of which the plaintiff complains, I was a regular employee of the defendant as a Senior Editor of the magazine it publishes, NEW YORK Magazine. Since then, I have become a free-lance writer.

I am the author of the article published in NEW YORK Magazine in its issue dated November 5, 1973 entitled "Coke: The Big New Easy-Entry Business". In researching said article, I was aided by a Special Agent of The Drug Enforcement Administration of the Department of Justice of the United States Government. I have not revealed the name

AFFIDAVIT

of my informant and assert the right to keep this information confidential from disclosure under the Section 79-h of the Civil Rights Law of the State of New York.

In or about September, 1973, I accompanied the Special Agent to the premises at 4018 Bergenline Avenue, Union City, New Jersey and other places in New Jersey mentioned in the article, and on another occasion in or about September, 1973, I visited said places alone. I was told by the Special Agent that a significant quantity of cocaine was being transported by car from Florida to the New Jersey area and sold or distributed at places mentioned in my article including the restaurant and bar owned by the corporate plaintiff. I was told by the Special Agent that persons engaged in the sale or handling of cocaine frequented the plaintiff's premises and other premises mentioned in the offending article. On one of my visits to 4018 Bergenline Avenue, Union City, New Jersey, the location of the plaintiff's bar and grill and restaurant, I observed one or more cadillacs with Florida plates or one or more Lincoln Continentals with diplomatic plates parked in the street in front of or near the plaintiff's premises.

I am informed by my attorney that there is nothing

AFFIDAVIT

libelous in the article and that summary judgment dismissing the complaint on the merits should be granted.

WHEREFORE, deponent respectfully prays for summary judgment dismissing the complaint on the merits.

(S) _____

Sworn to before me this

15 day of October 1974

(S)

DONALD G. McCABE
Notary Public, State of New York
No. 30-2508465
Qualified in Nassau County
Cert. Filed in New York County
Certification Expires March 30, 1975

-----X

Judge Charles L. Brieant

CIVIL ACTION FILE
No. 74 Civ. 2982

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

E. DOUGLAS HAMILTON, being duly sworn, deposes and says: I am an attorney duly admitted to practice in the courts of New York State and in the United States Supreme Court for the Southern District of New York, a member of the firm Hall, McNicol, Marett & Hamilton, the attorneys for the defendant herein have had charge of this action since it was commenced and am familiar with the facts and circumstances thereof and all the proceedings heretofore had herein.

This is an action for alleged libel.

The complaint is undated but the summons is dated July 12, 1974; both were served on July 17, 1974. The

AFFIDAVIT

defendant answered the complaint by an answer which was served by mail on August 6, 1974.

The answer admits the publication complained of and denies the allegations of defamation, malice and damage in both alleged causes of action. There are two affirmative offenses and one partial offense. The first affirmative offense alleges that the complaint fails to state a claim on which relief may be granted and the second alleges that in all material and substantial respects, the complained of matter is true.

The plaintiff, which is alleged to be a New Jersey corporation, was examined before trial by Maricela Maury on September 19, 1974. She testified that she was one of the owners of the corporation at one place and that she was the owner in another. She testified that her husband was secretary of the corporation, but did not know whether he was a stockholder.

The plaintiff served interrogatories and certain of the interrogatories which were propounded, were answered by the defendant through Thomas Plate, the writer of the offending article. These answers were served on or about September 25, 1974. By Notice of Motion dated October 8,

AFFIDAVIT

1974, returnable October 18, 1974, the plaintiff moved to require certain questions on which the writer Plate claimed privilege not to answer. This motion has been opposed, but in opposing it, we requested that decision be deferred until the present motion is before the Court. If the Court should grant our present motion for summary judgment, the plaintiff's motion to compel further answers to the interrogatories will become academic.

The matter complained of consists of three sentences in a long article written by Thomas Plate "Coke: The Big New Easy-Entry Business." The article was the result of investigative reporting on an illegal drug, cocaine, which is now being heavily traded. The offending sentences of which the plaintiff complains read as follows:

"They are still out there across the Hudson River, too - in Elizabeth, in West New York, in Union City. Late at night in Union City, bars like El Tropicano at 49th Street and Hudson Avenue and restaurants like El Meson Espanol at 4018 Bergenline Avenue become good places to meet a connection. Park your car some night in front of one of them, turn off all the lights and focus your binoculars on a big Cadillac El Dorado with Miami plates, or, if you're lucky, a nice Lincoln with diplomatic plates. A great tourist attraction, that Union City."

AFFIDAVIT

The article did not state that the plaintiff corporation was engaged in the illicit traffic in illegal drugs. It merely stated that the restaurant it owned by the same name, as well as another restaurant in the vicinity, El Tropicano, were "good places to meet a connection." There is nothing libelous in such a statement as the authorities collected in a memorandum of law to be submitted herewith will demonstrate.

No previous application for the relief herein sought has been made.

WHEREFORE, deponent respectfully prays for an order granting summary judgment dismissing the complaint on the merits with costs and disbursements.

(S) E. DOUGLAS HAMILTON

Sworn to before me this
15th day of October 1974

THOMAS R. LANGAN
Notary Public, State of New York
No. 60-4517952
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

- against -

NYM CORPORATION,

Defendant.

AFFIDAVIT

74 Civ. 2982

JUDGE CHARLES L. BRIEANT, JR.

-----x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MARICELA MAURY, being duly sworn, deposes and says:

That I am the President and one of the two Stockholders of the plaintiff corporation, EL MESON ESPANOL, and that I am making this affidavit in opposition to the defendant's motion for an order dismissing the action herein.

That the plaintiff corporation, EL MESON ESPANOL, was organized under the laws of the State of New Jersey in 1969 and was a closely held corporation, since the only two Stockholders and officers were my husband, HECTOR W. MAURY and myself. The corporation was organized to operate a restaurant and bar known as EL MESON ESPANOL at 4018 Bergenline Avenue, Union City, New Jersey. The bar had a New

AFFIDAVIT

Jersey State liquor license which authorized the sale of liquors and wines on the premises operated by the plaintiff. Some time in November of 1973 the defendant's magazine, "New York" dated November 5, 1973 appeared on the newstands. The day after the magazine was published containing the article which mentioned the restaurant premises owned and operated by the plaintiff, I had a visit from the Chief of Police of Union City, New Jersey. The Chief of Police came to visit me on the restaurant premises with the New York magazine in his possession and demanded to know whether it was true that we had allowed the illegal traffic in cocaine to take place on our premises as alleged in the article which appeared in the New York magazine. I was able to reassure the Chief of Police but thereafter we had constant visits from members of the police force of Union City and I had the impression that they were patrolling our premises. Union City has an organization of Cuban businessmen which meets periodically. Both my husband and myself are immigrants from Cuba and as such, my husband was regularly invited to the meetings. After the publication of the magazine article, we were never again invited to any meetings of the Cuban businessmen's association. One customer brought

AFFIDAVIT

me a photostatic copy of the article and asked whether it was true. Many people stopped me on the streets of Union City, New Jersey and asked me about the truth or falsity of the allegation contained in the article that our restaurant was a place where drug pushers regularly met and conducted their illegal business.

After the publication of the article, our business immediately declined until the point when it was cut by at least half the amount of business which we were doing prior to the publication of the article. This cut in business and the reluctance of our suppliers to grant credit to us on the previous basis caused the eventual collapse of our business.

Our restaurant was run by my husband and myself with the help of several employees when required. We worked at least 12 hours per day trying to run an honest family type business catering to the honest people, especially the Cuban immigrants who live in and around Union City, New Jersey. The honest people of our community after hearing about the article published in the New York magazine stayed away from our restaurant with the result that our business collapsed.

Neither my husband nor myself have ever been

AFFIDAVIT

arrested for any crime and I can state without any fear of contradiction that there was never any illegal transaction conducted on our premises. In the time that I ran our restaurant I never saw any known drug pushers, drug users or any other person engaged in the illegal drug traffic. The allegations contained in the article that our restaurant was a place in which the illegal drug traffic was conducted was completely false.

(S)

MARICELA MAURY

Sworn to before me this
24th day of October, 1974.

(S)

AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

AFFIDAVIT

- against -

74 Civ. 2982

NYM CORPORATION,

JUDGE CHARLES L. BRIEANT

Defendant.

-----x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

LAWRENCE LAUER, being duly sworn, deposes and says:

That I am the attorney for the plaintiff and that I am fully familiar with all the facts and circumstances heretofore had herein, and that I am making this affidavit in opposition to the defendant's motion for summary judgment.

This is an action brought to recover damages for libel resulting from certain defamatory statements concerning the plaintiff corporation, which were contained in an article published in the defendant's magazine. In the said magazine article, the statements were made that the restaurant premises owned and operated by the plaintiff was a good place

AFFIDAVIT

to meet a connection in the illegal drug traffic. In other words, the article stated that the restaurant premises owned and operated by the plaintiff was a place wherein was regularly carried on the illegal sale and traffic in cocaine. The article taken as a whole gave the impression that the plaintiff corporation cooperated with or engaged in the said illegal activities. That annexed hereto and made a part hereof as Exhibit "A" is a photostatic copy of the article which is the subject of the lawsuit herein. The statements concerning the plaintiff corporation appeared on page 71 and have been underlined by your deponent in order to bring them to the Court's attention.

The affidavit of Thomas Plate is attached to the moving papers and since he was the author of the article sets forth the alleged factual basis upon which the allegations concerning the plaintiff corporation were made. An examination of Mr. Plate's affidavit indicates that he claims the only information concerning these activities which he obtained prior to making the statements contained in the article was information received from an unnamed Special Agent of the Drug Enforcement Administration of the Department of Justice of the United States Government.

AFFIDAVIT

Besides refusing to give the name of the Agent, Mr. Plate fails to set forth any of the information which he allegedly received from the said Agent. Furthermore, it is obvious that Mr. Plate failed to make any independent observations or investigations which would confirm any of the information which he allegedly obtained from the secret unnamed source. It is respectfully submitted that based upon the affidavit of Mr. Plate, and the article, which accused the plaintiff corporation of illegal activities and the commission of various crimes that the complaint sets forth a proper cause of action for libel per se as well as an action for punitive damages.

WHEREFORE, your deponent respectfully requests that the defendant's motion be denied in all respects, and that the Court grant such other, further and different relief as to the Court may seem just and proper in the premises.

(S)

Lawrence Lauer

Sworn to before me this

24 day of October, 1974.

(S)

NORMAN HORWITZ
Notary Public, State of New York

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

- against -

NYM CORPORATION,

Defendant.

COMPLAINT

PLAINTIFF DEMANDS
TRIAL BY JURY

-----x

Plaintiff, by LAWRENCE LAUER, ESQ., its attorney,
respectfully shows to this Court and alleges

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: That the action herein is brought to recover
a sum in excess of \$10,000.00.

SECOND: That at all the times hereinafter mentioned,
the plaintiff is a corporation existing under and by virtue of
the laws of the State of New Jersey, having its principal place
of business located at 4018 Bergenline Avenue, Union City, New
Jersey.

THIRD: That upon information and belief, at all the
times hereinafter mentioned, the defendant, NYM CORPORATION,
was and now is a New York Corporation doing business in the
State of New York with an office located at 207 East 32nd

COMPLAINT

Street, New York, New York. Defendant, NYM CORPORATION, at all the times hereinafter mentioned, was and now is the owner and publisher of a magazine distributed and sold throughout the State of New York, and all other states, and known as "New York".

FOURTH: That at all the times hereinafter mentioned, the plaintiff corporation was engaged in the ownership and operation of a restaurant and bar.

FIFTH: That on or about November 5, 1973, the defendant maliciously published in the said "New York" in and about the State of New York and all other states of the United States, the following false and libelous statement concerning the plaintiff corporation:

"They are still out there across the Hudson River, too - in Elizabeth, in West New York, in Union City. Late at night in Union City, bars like El Tropicano at 49th Street and Hudson Avenue and restaurants like El Meson Espanol at 4018 Bergenline Avenue become good places to meet a connection. Park your car some night in front of one of them, turn off all the lights and focus your binoculars on a big Cadillac El Dorado with Miami plates, or, if you're lucky, a nice Lincoln with diplomatic plates. A great tourist attraction, that Union City."

(The complete text of said publication is annexed hereto and made a part hereof and marked Exhibit "A".)

COMPLAINT

SIXTH: That the said words were published by the defendant with reason to believe the same to be false and actual malice towards the plaintiff corporation.

SEVENTH: Upon information and belief, that the defendant, its servants and agents, wrongfully, negligently and carelessly failed and omitted to make investigation as to the truth of the said statement, insofar as the same concern plaintiff and plaintiff's reputation for being a law abiding business and accused the plaintiff corporation and its employees of engaging in criminal actions, prior to the printing, publication and circulation thereof, and the same was printed, published and circulated by the defendant as aforesaid unlawfully and in wanton and reckless disregard of the plaintiff's rights.

EIGHTH: That by publication of the said statement the defendant intended to convey and expose the plaintiff corporation to hatred, contempt, ridicule, eversion and to indicate that it conducted its business in an unlawful manner and encouraged the commission of crimes on its premises.

NINTH: As a result of the publication as aforesaid, plaintiff corporation was injured in its reputation and has been damaged in its attempt to conduct a law abiding business, all to its damage in the sum of TWO HUNDRED FIFTY THOUSAND

COMPLAINT

(\$250,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION

TENTH: Plaintiff repeats, realleges as if herein fully set forth at length each and every allegation contained in paragraphs "FIRST" through "NINTH" of this complaint.

ELEVENTH: That at the time of such publication, the defendant knew or could have ascertained with the exercise of reasonable care, that the said allegations were untrue and in publishing such false and defamatory matter, the defendant was actuated by actual malice and wrongfully and wilfully intended by such publication to injure the plaintiff.

TWELFTH: That by reason of such publication, the plaintiff has been greatly injured in its credit and reputation entitling it to recover punitive damages.

THIRTEENTH: That by reason of the premises, plaintiff is entitled to recover as and for punitive damages, the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendant on the First Cause of Action in the amount of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS, and plaintiff demands judgment on the Second Cause of Action against the defendant in the sum of TWO HUNDRED FIFTY THOUSAND

32a

COMPLAINT

(\$250,000.00) DOLLARS, together with the costs and disbursements of this action.

LAWRENCE LAUER
Attorney for Plaintiff
Office & P. O. Address
36 West 44th Street
New York, New York 10036

Coke: The Big New Easy-Entry Business

By Thomas Plate

"... Cocaine is now the most heavily traded illegal drug in Elmhurst, and if that is happening in Queens, it's everywhere . . ."

Until recently, Ryan's Bar off Roosevelt Avenue and 83rd Street in Queens had a split personality. By day it was a typical bar in Elmhurst-Corona, where patrons, predominantly Irish-American, ritualistically devoted themselves to the x-pack high. But by night Ryan's took on a different look. With the daytime crowd safely tucked away in well-locked apartments and duplexes, Ryan's attracted Queens residents of more recent vintage. As a rule they spoke a different language and held a considerably different philosophy of life: they tended to be cocaine dealers.

By midnight Ryan's Bar, one of the older and more venerable saloons in Queens, looked and in fact sounded more like a Bogotá café than a Queens saloon. While others in Elmhurst were watching Johnny Carson, cocaine dealers—most of them recent immigrants from Latin America, some of them illegal aliens—were drifting in and out of Ryan's as if it were a trading pit at the Chicago Board of Trade, quoting prices and arranging deliveries of significant quantities of cocaine. By 4 a.m. the cocaine dealers would head home, or to an after-hours bar somewhere in the city, and Ryan's would quiet down until the day shift took over again.

Even in deepest Queens, it seems, traffic in cocaine has become commonplace. While the teamster trucks were carting in the cases of Four Roses and Rheingold by day, a different, less obvious delivery system was bringing in cocaine by night.

Today, Ryan's is back to "normal." The Latin Americans from Colombia, Chile, the Dominican Republic, and so on, who live and work in Elmhurst, Queens, and who are heavily involved in the city's cocaine traffic, were recently persuaded by police raids to leave Ryan's and find some other place to make deals. But in the short-lived schizophrenic episode this tiny bar went through lies an important story about

New York City as a whole.

Cocaine is now the most heavily traded illegal drug in Elmhurst, by police estimates. And if it's happening in Queens, it may be taken as axiomatic that it is everywhere. "Cocaine is all over New York now," says John G. Schwabach, commanding officer of the New York Police Department's Narcotics Division. "There seems to be a lot more cocaine out there and a lot less heroin," says Jerry N. Jenson, the acting regional director of the federal Drug Enforcement Administration's New York office. "In fact, just about all the cases we have going in this office are cocaine cases." "In the year I've been in this office," says Mario Merola, district attorney of Bronx County, "the big switch has been to cocaine." John R. Bartels Jr., the former deputy director of Office for Drug Abuse Law Enforcement who was recently confirmed by the United States Senate as administrator of the Justice Department's Drug Enforcement Administration, says, "For whatever reason, we have a new demand situation now. And the demand is for cocaine."

Since 1971, when law enforcement authorities first reported an upsurge in cocaine activity, there appears to have been a shift in demand and supply in the international narcotics business. While heroin grabbed the headlines and the attention of the public and politicians alike, cocaine quietly but steadily grew in volume usage in this and other major cities in the United States until, in the view of many experts, it became the market leader among all illegal hard drugs.

It is especially the preferred drug among drug users who use more than one drug. For the marijuana smoker, for example, cocaine represents a step up in class. For the pill user, especially the amphetamine (speed) user, it represents an exotic high without having

to use a needle. (A needle-less high is important to many of the city's multi-drug users, especially to those who from childhood have nurtured an unshakable aversion to the doctor's needle.)

Cocaine is the drug of choice, not only among whites but, ever-increasingly, among affluent black drug users as well. Cocaine has traditionally been the status drug among black athletes, show-business personalities, and underworld figures (whose drug-usage is very limited and distinctly snobbish: black mob leaders condescendingly regard heroin addicts—black or white—as trash). It now seems to be attracting an even broader black clientele. Among Latin Americans in New York, cocaine is often the preferred drug of entertainers, expensive prostitutes, very successful businessmen, and certain religious sects for whom cocaine use is literally an act of faith. And among white drug users, cocaine is especially popular with rock stars, writers, younger actors and actresses, and stockbrokers and other Wall Street types. The main thing these otherwise varied people have in common is an income that can support the luxury of cocaine. Despite steadily increasing supplies, cocaine prices continue to rise in the city. At the level of a major wholesaler, a pound of cocaine today will go for as much as \$16,000. Six months ago the price was \$10,000. At the street level, the price of a single grain (the equivalent of 0.002285-ounce) of low-grade cocaine in early June averaged about \$5. A month later a grain of cocaine had shot up to \$6.50. The forecast is for further inflation in the cocaine industry, not least because of New York State's new drug law.

Cocaine remains, despite the governor's severe law, the drug of supply in New York. An iron law of drug marketing holds that it is supply that determines demand. This is so because the demand side of the equation is largely

"...The cocaine business looks like amateur night...armies of freelancers and seemingly square Latins and gringos..."

determined by the underworld's ability to deliver. Over the past three years, cocaine supply routes from Latin America were greatly expanding at the same time that heroin routes—the *French Connection*, for example—were drying up. Both heroin and cocaine flow into the United States through Latin American conduits, but the volume leader is now cocaine. The recent avalanche, in short, has not sated demand but stimulated it. This demand was not likely to vanish overnight in the wake of legislative fiat from Albany.

Nor has this three-year upswing in supply brought prices down. On the contrary, it has served simply to push them up. Indeed, the expense involved in cocaine use seems to provide part of the drug's cachet. One can even argue, as cocaine users often do, that cocaine is more expensive than heroin. Although in a pound-for-pound comparison heroin is more expensive (about \$20,000 per pound to cocaine's \$16,000), more cocaine is needed to maintain a high (see box on page 73).

A cocaine high usually lasts no more than a half-hour. Typically, cocaine users will snort maybe a dozen times during the night to keep from coming down to earth. (During the same period of time, heroin users will get by on a single injection.) You can be at Madison Square Garden or Elaine's and pop into the men's room, drop a little cocaine powder on the side of your hand, snort up, and zoom back to your seat or table before anyone has noticed your departure. (One can snort heroin just like cocaine, but it is a particularly inefficient method of consumption.) Cocaine's "convenience" costs dearly, however. It used to be that drug users could stretch a \$50 bag of cocaine over an evening. No longer. Good-quality cocaine, usually defined as at least 11 per cent pure, now costs considerably more, despite increasing supplies at most levels of distribution.

The demand for cocaine is as sky-high as its users, who are scaling the forbidden and potentially harmful cocaine high simply because it is there.

Cocaine has just about everything going for it in Latin America—politics, geography, even botany. The coca leaf (*Erythroxylon coca*)—no relation to the cocoa bean—is about as hardy as the dandelion. Within eighteen to 24 months of being planted—most commonly on the eastern slopes of the Andes—the coca bush leaves will start to generate the coca alkaloid that is the

essence of the drug. The leaf itself can be picked from two to six times a year. The coca bush will continue to produce high-yield cocaine leaves even after 30 years of continuous harvesting. The coca bush grows in the high Andes, often despite inclement weather and uncertain rainfall. (The bush is also cultivated in quantity in Ceylon, India, and Africa. I recently asked a federal drug agency official in Washington if the coca bush could be grown in a greenhouse in Manhattan, and he said, "I don't know for sure, and if I did, I'd rather not say.")

A coca bush is highly prized by Indian peasants in Peru, Bolivia and, to lesser degrees, in Colombia and Ecuador, for several reasons. It is a source of income; perhaps 10 per cent of Latin America's total coca leaf production, according to one Central Intelligence Agency estimate, is supplied by black-marketing peasants. It is also an instant painkiller. Hard-working peasants in the Andes, exposed to economic as well as environmental exploitation, chew coca leaves for much the same reasons that some tired executives swill five o'clock martinis. "They find that the coca leaf has a numbing effect regarding stomach pain," explains Ernest Caraballo, the chief of the federal Drug Enforcement Administration's Special Programs Division.

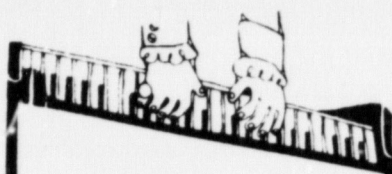
As a political matter, coca leaf production in Latin America is officially frowned upon but not rigorously suppressed. Only in Ecuador and Colombia is cultivation outlawed. In Peru, where coca leaf cultivation is legal but the transformation of the leaves into cocaine is illegal, it is estimated that over 100 first-stage laboratories exist.

The law is flouted not least because of official corruption. In Colombia, major cocaine exporters bribe police officials at astronomical amounts that can range from \$25,000 to \$90,000 a shipment. Political realities also nourish the coca crop. To ban growth of coca, even if it were feasible, would sow discontent among hundreds of thousands of Andean peasants. "Any effective attack on coca chewing, so deeply ingrained in Indian life," argues a U.S. government study currently being circulated in official circles, "could lead to serious political disorder." For the American government, as for many of the military governments in Latin America, the coca leaf may be a crude pacifier, but it is infinitely preferable to Castro.

Even if there were universally tough laws against the hardy coca bush, they would be extraordinarily hard to enforce. There is simply no easy way to monitor an entire continent where topography is conducive to smuggling. Much of that mass is mountainous terrain, providing cocaine businessmen with countless hiding places and landing strips for small planes. (One U.S. government study pointed out that more than 100 remote landing strips in Panama alone are used by narcotics smugglers.) These planes pick up cocaine sachets in hidden pick-up centers in South and Central America and fly them at altitudes below radar level to secret airstrips in such places as Mexico and Louisiana for shipment to Miami and Chicago and New York. The planes used are common small-passenger carriers that occasionally are modified for long-range flights. A twin-engine Beechcraft is a favorite of smugglers who rip out some of the comforts of home and add extra gas tanks and thereby get a flying range of 2,400 miles.

When American government drug officials talk about it, the cocaine business begins to sound like a major Latin industry. In Chile alone, for instance, U.S. intelligence agents identified three separate, highly organized cocaine smuggling gangs simultaneously at work several years ago. One of these was also said to control horse-racing ventures in Santiago. Another was linked to a local shoe factory. Someone in this organization got the bright idea of stuffing cocaine in the heels of shoes earmarked for export to the United States and Europe. A third organization was said by government reports to be headed by a Chilean gangster named Olga. The report identifies Ms. Olga not only as the head of an international smuggling ring, but also as chief organizer of Santiago's prostitution rackets.

According to government reports, there is virtually no major city in Latin America that is not in some way linked to cocaine traffic into the United States. But among law enforcement experts and drug dealers I've talked to, the best smuggling rings seem to be run by expatriate Cubans. And if there is any political slant to Cuban activity in cocaine, the tilt is to the right. Among the Cuban traffickers are former cabinet ministers and army officers of the Batista era, survivors of a gaudy, corrupt time in Havana when American tourists mingled with Cuban call girls, and Cuban gangsters rubbed elbows with gangster notables, including Meyer Lan-



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"... It's not the drug law of the state that prevails, but the law of the marketplace..."

sky, who helped Batista set up the casinos, and Lucky Luciano, who taught the Cubans a few things about narcotics profits. When Castro swept down from the mountains in 1958 and overthrew Batista, these Cubans fled. Many of them relocated in Miami, which as a result inherited a good portion of Havana's most-accomplished criminals. Of these, some are veterans of the abortive Bay-of-Pigs invasion and retain an appetite for certain cloak-and-dagger capers—expressed today in the international cocaine business.

The ablest Cuban cocaine entrepreneurs show a touch of Lansky and a touch of Luciano in their business style. Like Lansky, they prefer to remain aloof from the actual dirty work and confine their involvement to financing other gangsters. But like Luciano, they can move in a big way themselves—whenever possible, of course, with the paid-for cooperation of the relevant law enforcement authorities. They provide venture capital to cocaine rings struggling to get started, and they will on occasion personally handle large quantities of very high-quality cocaine. "They are more closely knit than the Mafia," says one Cuban, a former Miami dishwasher who is now a federal government undercover agent infiltrating Latin American cocaine rings, "and just like the Mafia, they get a lot of help from their own people. You must remember that there's no onus to cocaine among Cubans, especially those Cubans with money. Before Castro, the upper classes in Havana used it all the time."

But while the Cubans may have special talents as organizers, they have no special knowledge. Like every other Latin American smuggling group, they simply need a connection down South and a buyer up North. In between, they need some way to move the goods. And they, like other rings, rely on couriers swarming into American ports in great numbers. These couriers are typically simple folk—housewives, cab-drivers, pickpockets, day laborers. Usually the courier arrives flashing a phony passport. A few years ago one Latin American cocaine importer told a friend, who, unknown to the importer, was a U.S. government informant, that his organization found Mexico City a particularly good base to work from because "I can get any type of passport in Mexico. . . . Many government officials who reside there are corrupt."

One organized cocaine ring operating out of Santiago used 40 couriers at one time, according to another intelligence

report I saw. Each courier was given two and a half kilos to bring in. The cocaine was packed in pockets of a body carrier strapped around the waist. Other methods of concealment included stuffing the cocaine into hidden compartments in suitcases, or into brasieres, or into shoes or underwear. The couriers come to the United States by direct flight to New York, by indirect flight to New York by way of Rome, London or Montreal, by boat (Colombian seamen who jump ship, according to Sergeant Jim Sottile of the New York Police Department, remain a major source of cocaine in New York), overland from Mexico, and by small plane out of Central America to hidden runways in the southeastern and southwestern United States.

In one 1971 smuggling case, several couriers boarded a plane at Pudahuel Airport, Santiago, bound for Mexico City. As they boarded the plane, they were handed small plastic bags containing cocaine by Chilean luggage handlers. They hid the cocaine in canvas pouches commonly used by Chilean travelers to carry food. These couriers traveled under false names and were provided with phony Chilean passports. When they arrived in Mexico City, they were met by local contacts who provided them with falsified Mexican passports. The couriers then split up, proceeding to Nuevo Laredo, Ciudad Juárez, or Tijuana, Mexico, where they were met by still more contacts, and then simply walked or were driven across the border to the United States. There they were met by American contacts who drove the cocaine up to Chicago and New York. With the cooperation of Chilean officials and an informant who first outlined the smuggling operation in a government report, the U.S. government eventually severed the connection.

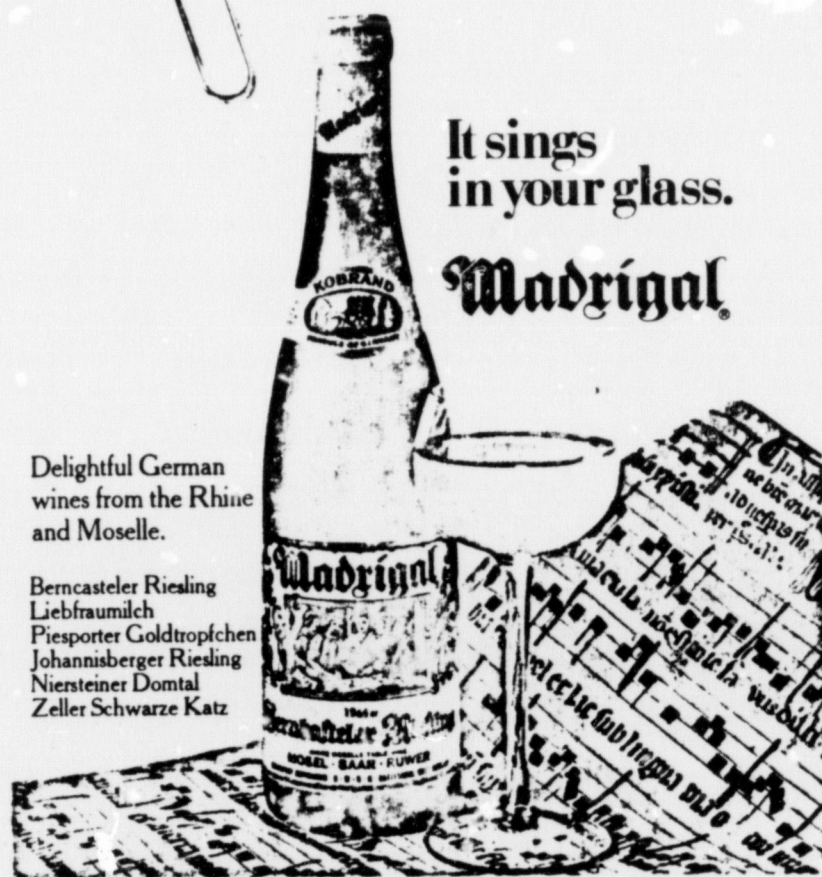
The courier system has proved so successful that a growing number of couriers have been getting ideas of their own. The middlemen are starting to branch out at both ends. After initially making a cocaine run into New York—often for little more than a few hundred dollars and the cost of a plane ticket—a courier will settle in with a relative here and begin scheming. With the cooperation of local travel agencies that organize frequent charter flights to Latin America, the courier will go into business for himself. He will take orders here and personally make the pickup in, say, Bogotá. In Latin America he can

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nail the student's connections); the noted political activist Abbie Hoffman, who was busted in the Hotel Diplomat for allegedly attempting to sell to an undercover narcotics officer some three pounds of cocaine; and a Bronx-born wheeler-dealer named Howard Zachary Fuchs.

The Fuchs case illustrates neatly what is happening to the structure of the cocaine distribution system. Last July 25, Mario Merola, the district attorney of Bronx County, announced the indictment of 33 individuals who, it was charged, formed an international combine that annually smuggled in an estimated 600 pounds of cocaine. The combine purchased cocaine in various Latin American centers, particularly Bogotá, and shipped the drugs by small plane to Mexico. From there, female couriers brought the drug in, bit by bit, to New York, where it was distributed to seven Eastern states by members of the combine. At the head of this outfit was Howard Zachary Fuchs, 27 years of age, a resident of 305 East 24th Street. At the time of Fuchs's arraignment in State Supreme Court in Bronx County, Peter Grishman, chief of the Narcotics Bureau in the Bronx D.A.'s office, alleged that the defendant had major financial interests in at least eleven different corporations in the United States, including a house of prostitution at 18th Street and Eighth Avenue in Manhattan; Pan World Imports of Manhattan, a firm which imported rugs (among other things) from Colombia and India; Water Brothers, Inc., of Buffalo, New York, which sold water beds and water pillows; Borogrove, Inc., of San Francisco, which owned and operated shoe stores in San Francisco and Los Angeles under the name Rainbow Cobblers; two unisex boutiques in Monticello, New York; a unisex boutique in Athens, Ohio, called Instant Quickie, Inc., and a bar in Athens located near the Ohio University campus. ("We've received an inquiry from one of the Ohio papers concerning Fuchs's activities in the town," Peter Grishman says, diplomatically. "It appears that the police chief of the town of Athens has recently resigned under a cloud.")

Narcotics Bureau Chief Grishman is still investigating the Fuchs empire, which, he says, really rested on the importation and distribution of cocaine. Until June of 1972, according to Grishman, Fuchs was employed by the New York City Department of Social Services to investigate welfare cheating. His salary was about \$9,000 a year. "In the sense that it took us a long time to learn about heroin dealers," says District Attorney Merola, "cocaine is wide open. We are only now beginning to make quality arrests in the cocaine

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field. The Fuchs case shows us we are dealing with fantastic amounts of money. It's really staggering."

The coke peddlers are lying a little bit low now. Still, they haven't all slipped over to motels in New Jersey to escape the jurisdiction of the New York State drug law. They are still out there, in the streets of the city. The cocaine entrepreneurs are suspected of working in "prone" locations such as the Ciro Bar on Broadway and 108th and the Oasis at Broadway and 148th. The money along the cocaine strip on the Upper West Side of Manhattan is just too much. "If you pass 50 bars around here," says Sergeant Bill Valentine, who is assigned to narcotics investigations in the area, "45 of them are narcotics meeting grounds."

They are still out there across the Hudson River, too—in Elizabeth, in West New York, in Union City. Late at night in Union City, bars like El Tropicano at 49th Street and Hudson Avenue and restaurants like El Masop Español at 4018 Bergen Line Avenue become good places to meet a connection. Park your car some night in front of one of them, turn off all the lights, and focus your binoculars on a big Cadillac El Dorado with Miami plates, or, if you're lucky, a nice Lincoln with diplomatic plates. A great tourist attraction, that Union City.

Or go on out to Elmhurst, Queens, not far from Shea Stadium and stand outside the El Jaguar on Roosevelt Avenue and 112th Street, or the El Barrilito bar at Roosevelt and 86th Street or La Tasca at Corona and Junction Boulevard in Corona. Just a few of the places police sources mention.

What is happening in Elmhurst, and on the Upper West Side, and across the Hudson in Jersey, amounts to something approaching a revolution in the criminal underworld. Latin Americans with connections, American entrepreneurs with ambition, free-lancers with guts—they are all in the drug business now, meeting in restaurants, in apartment buildings, in airport lobbies. The impact has been unsettling, not unlike what would happen to the structure of the city's prostitution rackets if thousands of Smith girls hit the streets. "Ten years ago I would have said that Italians controlled 90 per cent of the drug traffic in this city," says Bruce Iensen, assistant regional director of the New York office of the federal Drug Enforcement Administration. "Now I doubt that they control 50 per cent. And the slippage isn't over by a long shot."

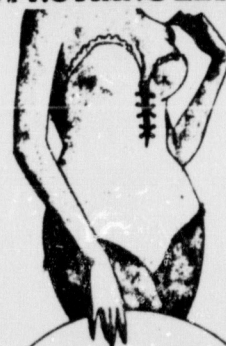
Cocaine trafficking cannot remain a free-lance business forever. Competition among emerging cocaine rings is already pitting Cuban against Puerto

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Rican, Colombian against Dominican, black against white—all in a struggle for hegemony in their areas of the city. If any one ethnic group can emerge on top of its own heap, that will be the group best situated to challenge the Italians. A recent study of organized-crime activity in New York suggests that the temporary truce recently observed between black and brown gangs and Italian-American gangs is unstable at best. "If our information is accurate, and I am confident that it is," writes Professor F. A. J. Ianni of Columbia University, in a forthcoming book *Black Mafia: Ethnic Succession in Organized Crime*, "the new route for drugs from Latin America should have some important effects on the drug scene in the United States. The most important effect will be the continued displacement of Italian-American syndicates from the international drug traffic as this new connection replaces the older one which came through Europe. The 'street implications' are enormous. It not only means that new patterns of wholesaling will be established, changing the ethnic balance of power in organized crime. It also means that cocaine may very well displace heroin as the street drug."

Even the most efficient and corruption-free police efforts are not likely to seriously impede—much less halt—cocaine traffic. If the supply exists, the demand will be there, too. And it will not be the law of New York State that prevails, but the law of the marketplace. Someone I know who occasionally snorts cocaine told me about an exchange he had had with a Manhattan connection on Columbus Avenue. It went roughly like this:

"How about an ounce?"

"Okay, but it'll cost you \$600."

"Is the stuff any good?"

"Pure flake, man." [That is, the best.]

The cocaine dealer walked out of the bar. Twenty minutes later he returned. He motioned to the young man at the bar to follow him into the men's room. In the men's room the cocaine dealer handed his customer a piece of tin foil containing an ounce of cocaine, and the young man gave the dealer \$600 in cash. The dealer left, and the young man nonchalantly walked back to the bar to finish his drink.

Suddenly the bartender came up to him from the other side of the bar.

"How much did he take you for?"

"What?"

"How much did you cop?"

"An ounce."

"What did you pay?"

"Six hundred."

"I can do better than that."

"Really? How much?"

"Three hundred."

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Photo: Albrie Walton

ANSWER

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----x

EL MESON ESPANOL,

Plaintiff,

- against -

CIVIL ACTION FILE
NO. 74 Civ. 298

NYM CORPORATION,

ANSWER

Defendant.

-----x

The defendant, by Hall, McNicol, Marett & Hamilton,
its attorneys, answering the complaint of the plaintiff:

FOR AN ANSWER TO THE FIRST ALLEGED
CAUSE OF ACTION

1. Denies the allegations and each and every allegation contained in the paragraph of the complaint designated FIRST.
2. Denies knowledge or information sufficient to form a belief as to the allegations and each and every allegation contained in the paragraphs of the complaint designated SECOND and FOURTH.
3. Admits that the defendant was and is a New York corporation with its principal place of business at 207 East 32nd Street, New York City, is the owner and pub-

ANSWER

lisher of the magazine NEW YORK which has a general circulation, and, except as so admitted, denies the allegations and each and every allegation contained in the paragraph of the complaint designated THIRD.

4. Admits that there was published in the November 5, 1973 issue of defendant's magazine NEW YORK an article, a copy of which is annexed to the complaint, from which there is a quotation in paragraph FIFTH of the complaint; and, except as so admitted, denies the allegations and each and every allegation contained in the paragraph of the complaint designated FIFTH.

5. Denies the allegations and each and every allegation contained in the paragraphs of the complaint designated SIXTH, SEVENTH, EIGHTH and NINTH.

6. Denies that the matter so published as afore-said was published maliciously.

7. Denies that the plaintiff by reason of the premises has suffered damages in any sum whatever.

AS AND FOR AN ANSWER TO THE SECOND ALLEGED
CAUSE OF ACTION.

8. Repeats and realleges the admissions, denials and allegations contained in the paragraphs of this

ANSWER

Answer designed 1, through 7., both inclusive, as the same referred to the allegations contained in paragraphs FIRST through NINTH of the complaint as realleged in paragraph TENTH thereof, with the same force and effect as if the same were here again expressly repleaded and set forth at length.

9. Denies the allegations and each and every allegation contained in the paragraphs of the complaint designated ELEVENTH, TWELFTH and THIRTEENTH.

AS AND FOR AN AFFIRMATIVE DEFENSE TO BOTH
ALLEGED CAUSES OF ACTION SET FORTH IN THE
COMPLAINT:

10. Alleges that the complaint fails to state a cause of action or claim on which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
TO BOTH ALLEGED CAUSES OF ACTION SET
FORTH IN THE COMPLAINT, THE DEFENDANT:

11. Repleads and realleges the admissions, denials and allegations contained in the paragraph of this Answer designated 4. with the same force and effect as if the same were here again expressly repleaded and set forth at length.

12. Alleges, upon information and belief, that the matter complained of herein, was and is in all material and substantial respects true insofar as the same was written of

ANSWER

and concerning the plaintiff.

AS AND FOR A PARTIAL DEFENSE TO BOTH
ALLEGED CAUSES OF ACTION SET FORTH IN
THE COMPLAINT, THE DEFENDANT:

13. Repleads and realleges the admissions, denials and allegations set forth in the paragraph of this Answer designated 4. and 12. with the same force and effect as if the same were here again expressly repleaded and set forth at length.

WHEREFORE, defendant demands judgment dismissing the complaint with costs.

HALL, McNICOL, MARETT & HAMILTON
Attorneys for the Defendant

By: _____
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a partner
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1 Copies Received

Date March 12, 1975

Firm Hall McNeil, Marrett & Hamilton

By J. Helsel

